IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17319 OF 2024

WITH

INTERIM APPLICATION NO. 16030 OF 2024

WITH

INTERIM APPLICATION (ST.) NO. 36992 OF 2024

1. Unnat Nagar Division 3 Co-operative Housing Society Limited, a Society duly registered under the provisions of Maharashtra Co-operative Societies Act 1960, having their office address Gajanand Maharaj Mandir, Unnat Nagar No.3, M.G. Road, Goregaon (W), Mumbai 400 062.

2. Ajay Ramanlal Naik
The Secretary of the Petitioner No.1
Age, 63, residing at 9/72
Unnat Nagar Division 3 Cooperative Housing Society Limited, Gajanand Maharaj Mandir, Unnat Nagar No.3 M.G. Road, Goregaon (W), Mumbai 400 062. }...Petitioners

-Versus-

1. State of Maharashtra
through Hon'ble Ministry of Housing & Co-operation Mantralaya, Mumbai
Through Government Pleader,
High Court, Appellate Side.

2. The Divisional Joint Registrar,
Having his office at Malhotra House,
Opp. CSMT, Fort, Mumbai 400 001

3. The Deputy Registrar Co-operative Societies, MHADA having office at Griha Nirman Bhavan, Room No.211 1st floor, Bandra (E), Mumbai 40005)
Respondent Nos.1 to 3 to be served with the Government Pleader, High Court, Appellate Side, Mumbai

4.Unnat Nagar No.3 (Block Nos. 1 to 3)
Co-operative Housing society Limited
Goregaon West, Mumbai

5. Unnat Nagar No.3 (Block Nos.4 to 6)
Co-operative Housing society Limited
Goregaon West, Mumbai }...Respondents

WITH

INTERIM APPLICATION NO. 16030 OF 2024

(Application for Impleadment)

Davidraj Mudliyar & Ors. }...Applicants

In the matter between

Unnat Nagar Division 3 Co-operative
Housing Society Limited and Anr. }...Petitioners

-Versus-

The State of Maharashtra and Ors }...Respondents

WITH

INTERIM APPLICATION (St). NO.36992 OF 2024

(Application for Impleadment)

Madhav Chopde & Ors. }.....Applicants

In the matter between

Unnat Nagar Division 3 Co-operative)
Housing Society Limited and Anr. }....Petitioners

-Versus-

The State of Maharashtra and Ors }....Respondents

Dr. Abhinav Chandrachud *i/by Mr. Abhishek Patil, for the Petitioner.*

Mr. G.S. Godbole, Senior Advocate *i/by Mr. Kaustubh Thipsay and Ms. Deepashikha Godbole, for the Respondent Nos. 4 and 5.*

Mr. N. R. Bubna, *for Intervenor/Applicant in Interim Application No. 16030 of 2024 and Interim Application (St.) No. 36992 of 2024.*

Ms. Savita Prabhune, *AGP for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 2 January 2025.

Pronounced On : 7 January 2025.

JUDGMENT:

1) Petitioner-Society and its Secretary have filed the present Petition challenging the Order dated 29 August 2024 passed by Minister-Co-operation dismissing their Revision Application and confirming Order dated 16 April 2024 passed by Divisional Joint Registrar as well as Order dated 18 September 2023 passed by District Deputy Registrar sub-dividing the Petitioner-Society thereby resulting in formation and registration of Respondent Nos. 4 and 5-Societies.

2) Brief facts leading to filing of the present Petition are that the then Maharashtra Housing Board constructed 18 blocks/buildings consisting of 144 tenements in the year 1960 for providing residential accommodation to Lower Income Group and dishoused persons on plot of land bearing CTS Nos. 79, 80 and 43 (part) Unnat Nagar No. 3, M.G. Road, Goregaon (West) Mumbai - 400 062. Maharashtra Housing and Area Development Authority **(MHADA)**, which took over functions of

erstwhile Maharashtra Housing Board, offered residential tenements to the occupants on ownership basis by accepting the agreed amount of consideration in the year 1992. Accordingly, on payment of the consideration suggested by MHADA, the occupiers of the tenements became owners of their respective tenements. Petitioner-Society was formed on 30 December 1996 by all 144 tenement owners. MHADA thereafter executed Deed of Sale dated 14 June 2000 in favour of the Petitioner-Society and sold all the 144 tenements to the Petitioner-Society. It appears that a separate Indenture of Lease dated 14 June 2000 was executed in favour of Petitioner-Society granting lease in respect of the land underneath and appurtenant to the said 18 blocks in favour of the Petitioner-Society.

3) It appears that Special General Body Meeting of the Petitioner-Society was held on 1 March 2015, which was attended by 78 Members and Managing Committee of the Society was authorized to initiate the process of redevelopment of the 18 blocks. Another Special General Body Meeting of the Society was held on 2 October 2022 which was attended by 115 members and 104 members voted for adoption of resolution for initiation of redevelopment process as per procedure established under Section 79A of the Maharashtra Co-operative Societies Act, 1960 **(MCS Act)** and one M/s. Ellora Project Consultant Private Ltd. was appointed as Project Management Consultant. The said Consultant prepared a feasibility report and also draft of tender to be floated. In the above backdrop, some of the members of the Petitioner-Society preferred application dated 9 April 2023 for convening the Special General Body Meeting of the Society for its sub-division. Two applications were addressed to the Deputy Registrar, Co-operative Societies on 21 April 2023 by Chief Promoters of Respondent Nos. 4 and 5-Societies for bifurcation of the Petitioner-Society. The Deputy

Registrar entertained applications preferred by Respondent Nos. 4 and 5-Societies and prepared a draft order on 24 April 2023 in respect of Block Nos. 1 to 3 and draft order dated 25 April 2023 in respect of Block Nos. 4 to 6. A draft Scheme of sub-division was appended to the draft orders dated 24 and 25 April 2023. The draft order was served on Petitioner-Society on 20 May 2023. The Petitioner-Society filed its objections and reply to the draft orders on 21 June 2023 and 17 July 2023. The Deputy Registrar consulted the Mumbai District Co-operative Housing Federation (**Federal Society**) which gave its recommendations for bifurcation of Petitioner-Society on 4 September 2023. The Deputy Registrar thereafter proceeded to pass orders dated 18 September 2023 along with applications filed by Respondent Nos. 4 and 5-Societies and ordered for bifurcation of Petitioner-Society by forming Respondent No.4-Society in respect of 24 tenement situated in Block Nos. 1 to 3 by directing its registration. Similarly, Respondent No. 4-Society was directed to be formed and registered in respect of 24 tenements situated in Block Nos. 4 to 6.

4) Petitioner-Society preferred two Appeals bearing Nos. 446 and 447 of 2023 before Divisional Joint Registrar challenging the orders dated 18 September 2023. The Divisional Joint Registrar however dismissed both the Appeals by common order dated 16 April 2024. Petitioner thereafter preferred Revision Application Nos. 272 and 273 of 2024 before the State Government. However, Minister-Co-operation has dismissed both the Revision Applications vide order dated 29 August 2024. Petitioner-Society has accordingly filed the present Petition challenging the orders passed by the Deputy Registrar dated 18 September 2023, by Divisional Joint Registrar dated 16 April 2024 and by Minister-Co-operation dated 29 August 2024.

5) I have heard Dr. Chandrachud, the learned counsel appearing for the Petitioner-Society. He would submit that the Deputy Registrar ought to have summarily rejected the applications filed by Respondent Nos. 4 and 5-Societies for bifurcation as the applications did not disclose any of the grounds enumerated under Section 18 of MCS Act. That bifurcation was sought by Respondent Nos. 4 and 5 only on account of opposition by handful of members to redevelopment process. That opposition by minority members to redevelopment process cannot be a ground for exercise of power of bifurcation of Society under Section 18 of the MCS Act. He would submit that permitting minority members to apply for bifurcation of the Society during redevelopment process would tantamount to frustrating the decision taken by the majority members. That interest of the Society is to be gathered from the wish and desire of majority of members and democratically adopted resolution for carrying out re-development process through a private developer cannot be permitted to be scuttled by handful members in minority by adopting indirect route of bifurcation of Society under Section 18 of the MCS Act.

6) Without prejudice to his first submission that power of bifurcation of Society cannot be misused under Section 18 of the MCS Act by minority members for opposing the redevelopment process, Dr. Chandrachud would further submit that the procedure adopted by Deputy Registrar while sanctioning bifurcation is in the teeth of provisions of Rule 17 of the Maharashtra Co-operative Societies Rules, 1961 **(MCS Rules)**. He would submit that under provisions of Rule 17, the Registrar is required to first prepare a draft scheme in respect of sub-division of Society and thereafter, consult the Federal Society and only after receipt of suggestions from the Federal Society, draft of the

order proposed to be issued under Section 18(1) is required to be served to the Society calling for its suggestions and objections. That, in the present case, before consulting the Federation, the Deputy Registrar prepared draft order on 24 April 2023 and served the same on the Petitioner-Society on 20 May 2023 before consulting the Federal Society. He would submit that the impugned order passed by the Deputy Registrar would indicate that suggestions of the Federal Society were received on 4 September 2023, i.e., after service of draft order on the Petitioner-Society. He would submit that Rule 17 envisages consultation with the Federation before service of draft order on the Society. That, in the present case, since draft order was served on the Society before consulting the Federation, the impugned order dated 18 September 2023 passed by the Deputy Registrar is *ab initio void*. He would submit that it is well settled proposition of law when power is given to an Authority to do a thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden. In support, he would rely upon the judgments of the Apex Court in ***Ramchandra Murarilal Bhattad and Others Versus. State of Maharashtra and Others***[1] and ***State of Uttar Pradesh Versus. Singhara Singh and Others***[2]. He would also rely upon the judgment of the Apex Court in ***Hemant Vimalnath Narichania and Another Versus. Anand Darshan C.H.S. Limited and Others***[3] in support of his contention that non-consultation with Federal Society at appropriate stage prescribed under the Rules vitiates the order of bifurcation. Dr. Chandrachud would accordingly pray for setting aside the orders passed by Deputy Registrar, Divisional Joint Registrar and Minister-Co-operation.

1 (2007) 2 SCC 588
2 AIR 1964 SC 358
3 (2016) 6 SCC 142

7) The Petition is opposed by Mr. Godbole, the learned Senior Advocate appearing for Respondent Nos. 4 and 5-Societies. He would submit that the Deputy Registrar is perfectly justified in ordering bifurcation of the Petitioner-Society by taking into consideration the overall interests of the members of the Society. That, one of the parameters for exercise of power under Section 18 of the MCS Act is recording of satisfaction by the Registrar about bifurcation being in the interest of members of the Societies as well as for the purpose of securing the proper management of the Society. That, in the present case, majority of the members are opposed to redevelopment of all the 18 buildings in respect of which Petitioner-Society was formed through a private developer. That, members of Respondent Nos. 4 and 5-Societies want to carry out self-development of their own buildings. That, even in respect of the remaining tenements whose owners/occupiers remained members of Petitioner-Society after bifurcation order, occupiers of tenements of 6 more blocks have opted to get themselves bifurcated from Petitioner-Society and accordingly filed intervention application in the present Petition. That, therefore it cannot be contended that minority members have taken the route of bifurcation for scuttling the redevelopment process. That order of bifurcation of Petitioner-Society by formation of Respondent Nos. 4 and 5-Societies is clearly in the interest of members of all Societies as well as would ensure proper management of each subdivided Societies.

8) He would further submit that the location of 3 + 3 blocks, in respect of which Respondent Nos. 4 and 5-Societies are directed to be registered, are such that they are divided by an internal road and there are no common amenities in respect of the 18 blocks/buildings. That the Registrar has applied his mind and has also consulted the Federal Society before passing the impugned orders for bifurcation. That the

bifurcation and formation of Respondent Nos. 4 and 5-Society does not cause any prejudice to the rest of the members of Petitioner-Society, who can carry redevelopment of their own blocks/buildings. That it is only the office bearers of Petitioner-Society who are opposing bifurcation for their own individual interests, when majority of the erstwhile members of the Petitioner-Society never wanted to go ahead with redevelopment through a private developer.

9) As far as provisions of Rule 17 of the MCS Rules is concerned, Mr. Godbole would submit that there is substantial compliance of the said provision. That, Section 18 of the MCS Act and Rule 17 of MCS Rules provide for consultation of the Federal Society, which has been ensured in the present case. That, the Federation has recommended bifurcation of the Petitioner-Society. He would submit that the mere departure from the order in which steps are to be taken leading to passing of final order of sub-division, would not result in any prejudice to the Petitioner-Society. He would rely upon the judgment of Single Judge of this Court in ***The Bombay Catholic Co-op. Hsg. Society Ltd. Versus V. B. Mathankar & others***[4] in support of his contention that consultation with the Federal Society is otherwise merely directory.

10) Mr. Godbole would further submit that much water has flown after passing of order of sub-division as the said orders were never stayed during pendency of the Appeal and Revision. He would submit that the members of Respondent Nos. 4 and 5-Societies have already vacated the possession of their own respective tenements and demolition process has already commenced. He would submit that Special General Body Meetings of the two Societies have been conducted and the respective Managing Committees have taken charge

[4] 2000 (3) MhLJ 273

of affairs of the said Societies. That numerous further steps towards redevelopment of the blocks of two societies have taken place viz. execution of seperate leases by MHADA, demarcation of land by MHADA, issuance of No Dues Certificate, consent verification by MHADA, issuance of consent letters for issuance of Commencement Certificate for work upto plinth level by MHADA, payment of premium for grant of additional FSI, actual allotment of additional FSI, etc. He would invite my attention to the recent photographs to demonstrate as to how the work of demolition of existing buildings has already commenced. Mr. Godbole would therefore urge this Court not to interfere in the impugned orders by taking into consideration the further developments. He would pray for dismissal of the Petition.

11) Mr. Bubna, the learned counsel would appear on behalf of Intervenors in Interim Application No.16030 of 2024 and Interim Application (St.) No.36992/2024. He would submit that owners / occupants of tenements in Block Nos. 7 to 9 and Block Nos. 10 to 12 have also decided to separate themselves from Petitioner-Society and have accordingly filed applications before District Registrar seeking direction against Managing Committee of the Petitioner-Society for conduct of Special General Body Meeting for the purpose of their separation. Mr. Bubna would challenge the authority of Secretary to file and maintain the present Petition. He would submit that General Body of Petitioner-Society has not approved filing of the present Petition. He would submit that out of total 18 blocks, two Societies (Respondent Nos. 4 and 5) are already separated and registered under impugned orders of Deputy Registrar comprising of 6 blocks and now, occupiers of tenements in 6 additional blocks have also applied for formation of separate Society. That thus, Petitioner-Society now represents tenement owners/occupants in respect of only 6 blocks / buildings and therefore,

it cannot be contended that route of bifurcation is adopted to scuttle redevelopment process by minority members. Mr. Bubna would pray for dismissal of the Petition.

12) In rejoinder, Dr. Chandrachud would submit that various steps allegedly taken by Respondent Nos. 4 and 5-Societies are during pendency of the present Petition and would therefore, be subject to outcome thereof. That, the tin sheets seen in the photographs are erected on 2 January 2025 just before commencement of hearing of the Petition with a view to cause prejudice against the Petitioner-Society. He would rely upon a General Body Resolution dated 18 June 2023 authorizing Managing Committee to take all steps for opposing bifurcation of Petitioner-Society and would urge for rejecting the objection of lack of authority. He would submit that the judgment of the learned Single Judge in ***Bombay Catholic CHS*** (supra) has been set aside by the Division Bench[5].

13) Rival contentions of the parties now fall for my consideration.

14) Petitioner-Society was initially formed by owners / occupiers of 144 tenements spread over 18 blocks. It appears that each block has 8 tenements. After the Managing Committee of Petitioner-Society started to take steps for redevelopment of 18 blocks, it appears that owners / occupiers of tenements in Block Nos. 1 to 6 did not concur with the position taken by the Managing Committee and the General Body and decided to carry out self-development of tenements situated in block Nos. 1 to 6. Accordingly, proposed Societies were formed in respect of Block Nos. 1 to 3 and Block Nos. 4 to 6 and applications were

[5] Appeal No. 20 of 2000 decided on 4 August 2007.

filed before the Deputy Registrar for sub-division of Petitioner-Society and for formation of separate Societies in respect of Block Nos. 1 to 3 and Block Nos. 4 to 6. The Deputy Registrar has passed orders dated 18 September 2023 sub-dividing the Petitioner-Society and forming Unnat Nagar No. 3 (Block Nos. 1 to 3) Co-operative Housing Society Ltd. (Respondent No. 4) in respect of 24 tenements in Block Nos. 1 to 3. Similarly, by separate order passed on 18 September 2023, the Deputy Registrar has ordered registration of Unnat Nagar No. 3 (Block Nos. 4 to 6) Co-operative Housing Society Ltd. (Respondent No. 5) in respect of 24 tenements situated in Block Nos. 4 to 6. The subdivision of Petitioner-Society and registration of Respondent Nos. 4 and 5-Societies is effected by the Deputy Registrar by exercise of powers under provisions of Section 18 of the MCS Act and Rule 17 of the MCS Rules. It would, therefore, be necessary to take into consideration the statutory scheme of Section 18 and Rule 17.

15) Section 18 of the MCS Act confers power on the Registrar to direct amalgamation, division and reorganization of a Society and provides thus :

> **18. Power to direct amalgamation, division and reorganisation in the public interest or in the interest of members, etc.**
>
> (1) Where the Registrar is satisfied that it is essential in the public interest or in the interest of members of such societies or in the interest of the co-operative movement, or for the purpose of securing the proper management of any society, that two or more societies should amalgamate or any society should be divided to form two or more societies or should be reorganised then notwithstanding anything contained in the last preceding section but subject to the provisions of this section, the Registrar may, after consulting such federal society as may be notified by the State Government by order notified in the *Official Gazette*, provide for the amalgamation, division or reorganisation, of those societies into a single society, or into societies with such constitution, property rights, interests and authorities, and such liabilities, duties and obligations, as may be specified in the order.

Provided that, such notified federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the amalgamation, division or reorganisation and the Registrar shall be at liberty to proceed further to take action accordingly.

(2) No order shall be made under this section, unless-

(a) a copy of the proposed order has been sent in draft to the society or each of the societies concerned.

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, either from the society or from any member or class of members thereof, or from any creditor or class of creditors.

(3) The order referred to in sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to the amalgamation, the division or reorganisation.

(4) Every member or creditor of or other person inserted in each of the societies to be amalgamated, divided or reorganised who has objected to the scheme of amalgamation, division or reorganisation, within the period specified, shall be entitled to receive, on the issue of the order of amalgamation, division or reorganisation his share or interest if he be a member and the amount in satisfaction of his dues if he be a creditor.

(5) On the issue of an order under sub-section (1), the provisions in subsections (2), (3) and (4) of section 17 shall apply to the societies so amalgamated, divided or reorganised as if they were amalgamated, divided or reorganised under that section, and to the society amalgamated, divided or reorganised.

(6) Nothing contained in this section shall apply for the amalgamation of [two or more co-operative banks or two or more primary agricultural credit societies

16) Thus, the power of amalgamation of two societies or division of one society into two or more societies or their re-

organization can be effected by the Registrar after recording his satisfaction in respect of one of the following four factors :

(i) in public interest.
(ii) in interest of members of societies.
(iii) in the interest of the cooperative movement or
(iv) for ensuring proper management of the society.

Once the Registrar records the satisfaction about existence of either of the exigencies, he needs to consult the Federal Society and thereafter, pass an order for amalgamation, division or reorganization. Under sub-section (2) of Section 18, an order of amalgamation, division or reorganization cannot be passed unless the copy of the proposed order has been sent in draft to the Society and the Registrar has considered the suggestions and objections received by him from the society, its members, etc.

17) Rule 17 of the MCS Rules provides for procedure to be followed by the Registrar while exercising power of amalgamation, division or reorganization under Section 18. Rule 17 provides thus :

> "**17. Direction by Registrar for amalgamation, division and reorganisation of societies:-**
>
> (1) Before issuing any order under sub-section (1) of Section 18 providing for the amalgamation, division or reorganisation of any society or societies, the Registrar shall prepare a draft scheme in respect of such amalgamation, division or reorganisation stating in particular the manner in which the new committee or committees, of the society or societies resulting from such amalgamation, conversion or reorganisation shall be constituted and the by-laws which such society or societies shall follow. The Registrar shall then consult such federal society as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him under sub-section (1) of Section 18, to the society or each of the societies concerned calling

upon it or them to invite objections or suggestions from any member or class of members thereof or from any creditor or class of creditors and to submit such objections and suggestions together with its own or their own suggestions and objections within a period of not less than two months from the date on which the copy of the draft aforesaid was received by it or them.

(2) The Registrar shall consider all such suggestions and objections and make such modifications in the draft order as may seem to him desirable in the light of those suggestions or objections and then issue a final order under sub-section (1) of Section 18.

(3) Any member or creditor of each of the societies to be amalgamated, divided or reorganised, who has objected to the scheme of amalgamation, division or reorganisation within the period specified in sub-rule (1), may apply to the Registrar for payment of his share or interest, if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Such application shall be separate and distinct from the objection or suggestion which he may have submitted to the society or the Registrar under clause (b) of sub-section (2) of Section 18. It shall be competent for the Registrar to nominate an officer not below the rank of a Deputy Registrar to investigate such applications and to determine the payments required to be made to the members or creditors, as the case may be.

(4) Subject to the provisions of the Act, the rules and the by-laws, the Registrar may by order require the society concerned to meet in full or satisfy otherwise all due claims of the members and creditors and thereupon the society shall be bound to meet in full or satisfy otherwise all due claims of the members and creditors within such time as may be specified by the Registrar in the order."

18) Thus, under provisions of Rule 17(1), the Registrar is required to prepare a draft scheme in respect of amalgamation, division or reorganization stating the manner in which new committee or committees of society/societies resulting from the amalgamation, division or reorganization would be constituted and the bye-laws which such societies shall follow. The Registrar is thereafter required to consult the Federal Society which is required to offer its remarks within 45 days of receipt of communication from the Registrar. The Registrar shall thereafter consider the suggestions made by the Federal Society, if any and thereafter send copy of draft of the order proposed to be issued

by him to the Society for inviting its objections/suggestions. After considering the suggestions and objections, the Registrar can pass an order under provisions of sub-section (1) of Section 18.

19) Though Section 18 provides for mandatory consultation with the Federal Society by the Registrar before making order of amalgamation, division or reorganization, the provision is silent about the exact stage at which such consultation is required to be made. Section 18 merely provides for consultation with the Federal Society, service of draft order on the Society sought to be divided and consideration of suggestions / objections made by the Society before passing final order of sub-division. Plain reading of Section 18 would create an impression that the process of consultation with the Federal Society can be undertaken by the Registrar at any stage. However, Rule 17 of MCS Rules specifies the exact stage at which consultation with the Federal Society is required to be made by the Registrar. Rule 17 envisages that the Registrar must first prepare a draft scheme of sub-division and thereafter consult the Federal Society by seeking its remarks. The Registrar is then required to consider the suggestions made by Federal Society and thereafter prepare a draft order proposed to be passed and serve such draft order to the Society, which is sought to be sub-divided for seeking its suggestions/objections. Thus, while Section 18 of the MCS Act is silent about the exact stage when consultation with the Federal Society is required to be made, Rule 17 specifies that consultation with the Federal Society is to be made after preparation of draft scheme, but before preparation of draft order and service of the same on the Society concerned.

20) According to Dr. Chandrachud, the Registrar has not followed provisions of Rule 17 which envisages consultation with the Federal Society before preparation of the draft order. According to him, the Registrar first prepared the draft order, served the same on the Society and thereafter, consulted the Federal Society. In the present case, the applications for subdivision were made by Respondent Nos. 4 and 5 on 21 April 2023. The Registrar first prepared the draft orders dated 24 April 2023 and 25 April 2023 and appended the draft scheme for sub-division of Petitioner-Society to the said draft orders at Annexure-A thereto. The exact date on which letter was issued to the Federal Society for consultation is not known. However, the bifurcation order dated 18 September 2023 would indicate that Federal Society (Mumbai District, Co-operative Housing Federation Ltd.) offered its remarks to the Registrar on 4 September 2023.

21) Thus, in the present case, the Registrar first prepared a draft order containing draft scheme for subdivision of Petitioner-Society and served the same on Petitioner-Society on 20 May 2023. The Petitioner-Society filed its reply to the draft order on 21 June 2023 and 7 July 2023. The process of consultation with Federal Society took place later on 4 September 2023. The Registry thereafter proceeded to pass final order of sub-division on 18 September 2023. Thus, the process of consultation with the Federal Society has apparently not taken place at exact stage specified under Rule 17. The Registrar consulted the Federal Society after preparation of draft order and service thereof on Petitioner-Society when Rule 17 mandates the said consultation to be done before preparation of draft order and service thereof to Society concerned.

22) In the light of the above position, the issue that arises for consideration is whether the impugned orders of subdivision would be vitiated on account of the process of consultation with Federal Society having been taken place at an erroneous stage by the Registrar. To paraphrase, whether non-following of the exact stage prescribed in Rule 17 for consultation with the Federal Society would vitiate the order of sub-division of the Society ?

23) Dr. Chandrachud has relied upon the judgments of the Apex Court in ***Ramchandra Murarilal Bhattad*** (supra) and ***Singhara Singh*** (supra) in support of his contention that once statute mandates doing of a thing in a particular way, the things must be done in that way and not otherwise. Both the judgments have essentially discussed the ratio of the English Judgment in ***Taylor Versus. Taylor***[6] which expounds the proposition that when a statute confers a power to do an act and has laid down the method in which that power is to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. In paragraph 47 of the judgment in ***Ramchandra Murarilal Bhattad,*** the Apex Court has discussed the judgment in ***Singhara Singh*** and has held as under :

> "47. Reliance has also been placed on ***State of U.P. v. Singhara Singh*** Wherein this Court quoted with approval the decision in ***Taylor v. Taylor*** (ChD at p.431) for the proposition that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. There is again no quarrel over the aforementioned proposition of law. Here the Authority has not exercised any power forbidden by law. The Authority has also not exercised its power in the manner which is not in accordance with law."

[6] (1875) 1 ChD 426

24) There can be no dispute about the proposition cited by Dr. Chandrachud. However, the statute in the present case (Section 18 of MCS Act), merely prescribes the methodology of consultation with the Federal Society before making of order of subdivision. There is no dispute to the position that the said requirement is fulfilled in the present case as the Registrar has undoubtedly consulted the Federal Society before making of order of subdivision. The issue here is slightly different. There is slight departure in the order prescribed in Rule 17 by the Registrar where the consultation has taken place after preparation of the combined draft order and draft scheme and after receipt of objections by the Petitioner-Society. The issue therefore is whether slight alteration in the order of taking prescribed steps in Rule 17 would tantamount to exercise of statutory power of division of the society *de hors* the methodology prescribed for exercise of that power for attracting the principle enunciated in ***Ramchandra Murarilal Bhattad*** and ***Singhara Singh***.

25) Dr. Chandrachud has relied upon the judgment of the Apex Court in ***Hemant Vimalnath Narichania*** (supra) which has dealt with the issue of power and duty of the Registrar under Section 18 of the MCS Act and Rule 17 of the MCS Rules. Before the Apex Court, the issue was about bifurcation of Respondent No. 1-Society consisting of two buildings. 12 Members from Wing A of the Society moved an application before the Deputy Registrar for sub-division of the Society. The Registrar has prepared a draft scheme on 16 July 2007 by stating out the areas of both the buildings and division thereof in addition to provision made for enjoyment of the certain areas and facilities in common. The draft scheme so prepared was forwarded to Respondent No.1-Society by the Registrar on 19 July 2007 and the same was also simultaneously sent to the Federal Society for its remarks. The Registrar

thereafter proceeded to prepare a draft order of subdivision on 5 September 2007 which was also sent to Respondent No.1-Society as well as the Federal Society. It appears that a second draft order dated 18 March 2008, was prepared by the Registrar which was again served on Respondent No.1-Society as well as on the Federal Society. The Federal Society addressed communication dated 19 July 2008 giving its remarks. Thereafter, draft of the order was circulated by the Deputy Registrar on 22 August 2008 seeking comments from Respondent No.1-Society for inviting its objections. Thereafter, order was passed on 3 November 2008 dividing the Respondent No.1-Society and formation of a separate society in respect of certain wings in the buildings of the Society. The order of sub-division was challenged by Respondent No.1-Society before the Divisional Joint Registrar, who dismissed the Appeal. The Revision Application was also dismissed by the State Government. When the matter reached this Court, the Writ Petition came to be allowed by this Court by setting aside the order of subdivision holding that after preparation of draft order, the Registrar was duty-bound to consult the Federal Society before passing the final order. The Apex Court has set aside the order passed by this Court by allowing the appeal holding that the consultation with the Federal Society was required to be made after preparation of the draft scheme and not after making of draft order. The Apex Court held that this Court was not justified in holding that there was any infraction on the part of the Deputy Registrar in not again consulting the Federal Society on the draft order. The Apex Court held in paragraph nos. 14 to 17 as under:

> **14.** Section 18(1) of the Act and Rule 17 of the Rules deal with, inter alia, division of an existing society. The power under Section 18(1) of the Act can be exercised if the Registrar is satisfied with the essential requirements mentioned in the said sub-section (1). The section, however, obliges the Registrar to exercise such power after consulting such federal society as may be notified in the Official Gazette. Sub-section (2) of Section 18 imposes two more conditions

and states that: (*a*) no order for division be made unless a copy of the proposed order has been sent in draft to the society concerned, and (*b*) the Registrar shall consider the suggestions and objections, if any, either from the society or from any of its members and may make such modifications in the draft order as may seem desirable to him.

15. Rule 17(1) of the Rules while detailing out the procedure to be followed, lays down that before issuing any order under Section 18(1) providing for division of an existing society, the Registrar shall prepare a draft scheme. The Rule further lays down that the Registrar shall then consult the federal society and after considering the suggestions, if any, made by such federal society, shall send a copy of the draft order proposed to be issued by him to the society. The society would also be called upon to invite the objections or suggestions from any member or class of members of the society. Said sub-rule (2) then states that the Registrar shall consider all such suggestions and objections and make such modifications in the draft order as may seem desirable to him and shall then issue a final order under sub-section (1) of Section 18.

16. Thus as regards division of an existing society, following steps emerge from the reading of these provisions:

16.1. The Registrar shall first prepare a draft scheme.

16.2. He shall then consult the federal society. As part of process of consultation, the Registrar would naturally be obliged to send the draft scheme to the federal society.

16.3. The suggestions, if any, made by the federal society would then be considered and the Registrar shall thereafter prepare a draft order, proposed to be issued by him. This draft order shall then be sent to the society concerned calling upon the said society to invite objections or suggestions from any of its members.

16.4. If any suggestions or objections are made to the draft order, the Registrar shall consider if any modifications seem desirable and in the light of such suggestions or objections he shall then issue a final order.

17. These provisions make it very clear that the stage for consultation with the federal society is when the draft scheme is contemplated. After the stage of consultation with the federal society is over, the next stage arises for preparing draft order which is then circulated for inviting the objections or suggestions. The provisions nowhere contemplate the draft order to be again sent to the federal society as part of process of consultation. The assessment made by the High Court in that behalf is completely incorrect. In the present case, at the stage of draft scheme the Federal Society was consulted in the matter and thereafter draft order was prepared in respect of which objections or suggestions were invited. The High Court was not, therefore, justified in holding that there was infraction on part of the Deputy

> Registrar in the present matter. In our view, the exercise of power by the Deputy Registrar and the procedure adopted by him were perfectly in tune with Section 18 of the Act and Rule 17 of the Rules.

26) In my view, the judgment of the Apex Court in ***Hemant Vimalnath Narichania*** does not provide much assistance to the issue at hand. The issue before the Apex Court was entirely different viz., whether second consultation with the Federal Society on draft order is necessary or not ? The Apex Court has not decided the issue with regard to the exact stage at which consultation with the Federal Society is required to be undertaken by the Registrar. In my view, therefore, the judgment in ***Hemant Vimalnath Narichania*** cannot be read in support of an absolute proposition that consultation with the Federal Society at an erroneous stage would result in automatic vitiation of the order of subdivision.

27) Mr. Godbole has relied upon judgment of Single Judge of this Court (*His Lordship Justice R.M. Lodha, as he then was*) in ***The Bombay Catholic Co-op. Hsg. Society Ltd*** (supra). In case before this Court, after receipt of application for bifurcation of the Society under Section 18 of the MCS Act, the Deputy Registrar first held the consultation with the Federal Society and after receipt of opinion of the Federal Society about bifurcation of the Petitioner-Society, the Deputy Registrar issued a draft order to the Society, tentatively recording bifurcation and formation of two Societies and inviting objections from the Petitioner-Society. The Petitioner-Society objected to the bifurcation plan and made representation to the Federal Society. The Federal Society re-examined the matter and advised against bifurcation of the Society. After considering the records and after visiting the Society, the Deputy Registrar withdrew the draft order. The affected parties

challenged the order of the Deputy Registrar withdrawing the draft order by filing Appeal before Divisional Joint Registrar, who allowed the Appeal and set aside the order of the District Deputy Registrar and remanded the case back to the Deputy Registrar. The Revisional Authority, however, set aside the order of the Appellate Authority and remanded the proceedings to the Appellate Authority for a fresh decision. The Appellate Authority once again set aside the order passed by the Deputy Registrar and remanded the proceedings for fresh decision from the stage of draft order for bifurcation. The Deputy Registrar ultimately passed an order of bifurcation in the remanded proceedings. The order of bifurcation was upheld till the Revisional Authority and the matter landed before Single Judge of this Court. In the light of the above factual position, one of the issues that was raised by the Petitioner-Society before Single Judge of this Court was there was no meaningful consultation with the Federal Society by the Deputy Registrar and that the objection raised by the Petitioner-Society ought to have been brought to the notice of the Federal Society, so that the Federal Society would have complete material before it for giving its remarks. In the light of the above factual position, Single Judge of this Court held that Section 18 does not specify the stage at which the consultation with the Federal Society should occur and that such consultation must precede preparation of the draft order. It was further held that neither Section 18 nor Rule 17 contemplate consultation with the Federal Society after receipt of objections from the Society. This Court held as under:

> **9**. To appreciate this contention, it would be advantageous to refer to some relevant facts. The tenant members made an application for division of the society to the District Deputy Registrar on 3rd June, 1979. The copy of said application was sent by the concerned authority to the Federal Society viz. Bombay-Thane District Co-operative Housing Federation Limited to its opinion. The Federal

Society vide their letter dated 31-8-1979 expressed their view in favour of the bifurcation of the said society. After receipt of the views of the Federal Society, the Deputy District Registrar issued draft order dated 6-9-1979 proposing bifurcation of petitioner-society in the interest of the members of the society and in order to secure proper administration and management of the society. Upon receipt of the draft order, though no specific reply was sent by the society but vide its communication dated 15-10-1979 and the note appended thereto, the Secretary of the society requested the authority to consider the said note circulated to its members treated as reply to the draft order till further communication was sent by the society. It appears, thereafter, the society took up the matter with the Federal Society on its own and subsequently, the Federal Society seems to have changed its view and informed the authority that petitioner-society does not need to be divided. The Assistant Registrar vide its order dated 22-2-1983 held that bifurcation of society was in public interest as well as for better and proper management of the society and in the interest of co-operative movement. The question arises whether consultation with the Federal Society in the aforesaid facts and circumstances was proper or suffered from any illegality.

****

12. According to section 18, the order of bifurcation of society can be passed by the Registrar upon his satisfaction that it is essential in the public interest or in the interest of the co-operative movement or for the purpose of securing proper management of any society after consulting the Federal Society. As provided in sub-section (2) of section 18, no order for division of the society can be passed by the Registrar or for that matter authority who has been delegated, such power unless a draft order has been served on the society and the concerned authority has considered the reply from the concerned society within time as may be fixed by the authority. Rule 17 specifically provides the stage at which the consultation with the Federal Society is required to be made and the procedure which is required to be followed by the authority under section 18. It provides that before passing an order for division, the competent authority shall prepare a draft scheme stating the manner in which the new committee or committees of the society or societies resulting from such division shall be constituted and the bye-laws which the society or societies shall follow. After such draft scheme is prepared, the authority is required to consult the Federal Society. The expression occurring in Rule 17, "Registrar shall then consult such federal society, as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him under sub-section (1) of section 18, to the society calling upon objections or suggestions" is clearly indicative that the consultation which the Registrar is required to have with the Federal Society must precede the issuance of draft order to the affected society. Neither section 18 or Rule 17 provides that the consultation with the Federal Society by the competent authority must be held after the reply or objections are received from

> the concerned society. Section 18 does not specify the stage at which the Registrar is required to have consultation with the Federal Society but Rule 17 makes a clear provision that the Registrar shall consult the Federal Society before the draft order is issued and served upon the society. Rule 17 contemplates that before the draft order is served by the competent authority upon the concerned society, it should have consultation with the Federal Society and after considering the suggestions or opinion, if any, received from the Federal Society, the draft order should be served upon the society. The scheme of section 18 and Rule 17 appears to be that after consultation with the Federal Society, the competent authority must issue and serve draft order upon the society proposing division so that the concerned society can submit its objections comprehensively knowing the suggestions or views of the Federal Society. I do not find from the conjoint reading of the provisions of section 18 and Rule 17 that the competent authority is mandatorily required to consult Federal Society after receipt of objections or reply from the society even though the Federal Society has been consulted before draft order. That is not the scheme of section 18 and Rule 17.

28) However, when the judgment of the learned Single Judge in ***The Bombay Catholic Co-op. Hsg. Society Ltd*** (supra) was challenged in Appeal before the Division Bench, the Division Bench by its judgment and order dated 4 August 2007 set aside the order of the Single Judge, *inter-alia* holding that the second opinion of the Federal Society made upon representation made by the Petitioner-Society could not have been ignored by the Deputy Registrar. The Division Bench noted that the Federal Society was consulted before preparing the draft order and after preparation of the draft order, the same was also send by the Deputy Registrar to the Federal Society for information and necessary action. The Division Bench noted that the Deputy Registrar did not send copy of objection raised by the Petitioner-Society to the Federal Society and that the Federal Society had communicated its opinion against the draft order to the Deputy Registrar, but the Deputy Registrar did not take into consideration, opinion of the Federal Society while making final order. The Division Bench noted that the objection raised by the Federal Society to the draft order was not even referred to in the final

order of bifurcation. The Division Bench recorded this position in para-4 of its order as under :

> 4. Perusal of the order of the learned Single Judge shows that he has held that the requirement of the Registrar consulting the federal Society contained in Section 18 of the Act is mandatory. According to him, the Deputy Registrar has complied with that requirement by consulting the Federal Society before preparing the draft order. The learned Single Judge has held that a process of making an order for bifurcation of Society is divided in two stages viz. (i) preparation of the Draft order, (ii) Service of the Draft order on the Society proposed to be bifurcated and consideration of objection if any raised to the draft order. According to him, the Registrar has to consult the Federal Society only in the first stage, no consultation is required with the federal society in the second stage. So far as this aspect of the matter is concerned, following are the admitted facts:-
>
> (i)Before preparing the draft order the Deputy Registrar wrote a letter to the Federal Society.
>
> (ii) The federal Society informed the Deputy Registrar that it has no objection to the proposal.
>
> (iii) A copy of the draft order was sent by the Deputy Registrar to the Federal Society for information and necessary action.
>
> (iv) The petitioner society objected to the draft order, but the Deputy Registrar never sent copy of the objection raised by the Society to the Federal Society.
>
> (v) The federal society communicated its opinion against the draft order to the Deputy Registrar.
>
> (vi) The Deputy Registrar has not taken into consideration the objection of the federal society while making the final order. In fact has not even referred to that objection in the order.

29) The Division Bench thereafter took into consideration the provisions of Section 18 of the M.C.S. Act and Rule 17 of the M.C.S. Rules and proceeded to hold as under :

Perusal of the above Rule shows that Rule 17 of the Rules incorporates additional condition of the Registrar consulting the federal society even in the process of preparing draft scheme of bifurcation. **The submission on the basis of the provisions of Rule 17 of the Rules on behalf of the respondents is that the requirement of consultation with the federation is only before the preparation of draft scheme. According to the learned Counsel, it is not necessary for the Registrar to consult the federation after the preparation of draft scheme. If the provisions of sub-section (1) of Section 18 of the Act are read with the provisions of Rule 17 of the Rules, it becomes clear that reading of rule in the manner as is suggested by the learned Counsel appearing for respondents, will amount to diluting the requirement incorporated in Section 18 of the Act of consulting the federation before making the order of bifurcation.** Under Section 18 of the Act, the Registrar before making the order of bifurcation apart from consulting the federal society has also to take into consideration the objections raised by the members of the society etc. If the construction placed by the learned Single Judge on the provisions of Section 18 of the Act and Rule 17 of the Rules is accepted, then the process of consultation with the federal society would be over with the preparation of the draft order. The federal society would be totally excluded from the further process. Section 18 of the Act requires the registrar to consult the federal society before making the order of bifurcation.

The Supreme Court in its Judgment in the case of "Indian Administrative Service (S.C.S) Assocation, U.P. And others vs. Union of India and others, 1993 Supp(1) Supreme Court Cases 730" has observed that consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution.

Therefore, when sub-section (1) of Section 18 of the Act requires the Registrar to consult the federation before making the order of bifurcation, it requires him to make available to the federation, before he makes the order of bifurcation, all the material which he has to consider for making the order of bifurcation, and that can be achieved by the Registrar only if the Registrar after the draft order is prepared, sends a copy of that draft order to the federation and also sends a copy of the objection that he may have received from the society, its members etc to the federation. **As the requirement of the provision for consultation is that all the material which the authority proposes to take into consideration for making the order has to be made available to the body to be consulted, the registrar will have to send the objection received to the draft order to the federal society and will have to take into consideration the opinion submitted by the federal society while considering the question whether bifurcation order is to be made or not. It is to be noted that section 18 of the Act requires the registrar to consult the federal society before making the order of bifurcation and not only before preparing draft order of bifurcation.** In the present case, however, we find that so far as the procedural requirement of consultation with the federal society is concerned, it is substantially complied with inasmuch as the Registrar in fact forwarded a copy of the draft order to the federation and though after the Registrar received the reply from the Society, he did not forward that reply to the

federation, nevertheless the Society approached the federation and appraised it of its point of view and then, the federation submitted its opinion to the Registrar. **In our opinion, the flaw in the order is that the final order of bifurcation which is made by the Registrar does not on its face show that the Registrar has applied his mind to the opinion submitted by the federation in relation to the draft order of bifurcation.** Perusal of the Judgment of the learned Single Judge shows that according to him the Registrar was not obliged to take into consideration the opinion, of the federal society because the opinion of the federal society has to be taken into consideration by the Registrar only for making draft order of bifurcation and not the final order of bifurcation. **We have observed above that according to the provisions of Section 18 of the Act read with Rule 17 of the Rules, the Registrar has to take into consideration the opinion expressed by the federal society at both the stages i.e. at the stage of making draft order and at the stage of making the final order**. It was submitted by the learned Counsel appearing for respondents that it was not necessary for the Registrar to consider the opinion of the federation because that opinion was considered by the appellate authority when it passed the order dated 15.6.1982 and has held that on the basis of that opinion, the Registrar was not justified in dropping the proceedings. In our opinion, the submission made by the learned Counsel is not well founded. We have referred to the judgment dated 5.10.1988 of the learned Single Judge of this Court in Writ petition no.708 of 1983 above. By that judgment the Divisional Joint Registrar was directed to decide appeal against the final order of bifurcation ignoring the order dated 15.6.1982 passed by the appellate authority. It is thus clear that the Deputy registrar was also to decide whether to make the order of bifurcation on the basis of the material on record, without being influenced by the observations in the order dated 15.6.1982, because those observations were made for a different purpose i.e. to find out whether the Deputy Registrar was justified in dropping the proceedings because the federal society had expressed opinion against the proposal. Had the appellate authority formed final opinion it would not have remanded the matter back. It is therefore, clear that the appellate authority wanted the Deputy Registrar to consider the entire material on record again for the purpose of deciding whether the bifurcation order is required to be made or not. While considering it, the observations made by the appellate authority in the order dated 15.6.1982 would not be binding on the Deputy Registrar because those observations were made though on the basis of the same material but for a different purpose, but the Deputy Registrar was to consider, though it may be the same material, for a different purpose. **So far as the question whether the condition of consultation with the federal society incorporated in Section 18 of the Act is mandatory or not is concerned, the learned Single Judge proceeded on the footing that the condition is mandatory.** Even before us nobody has submitted otherwise. It may be pointed out that Section 78 of the Act deals with removal of a managing committee of Co-operative Society. It also requires the Registrar to consult federal society before making the order of removal. Similar provision for consultation with the federal body has been made in the Maharashtra A.P.M.C. Act. There are a series of judgments of different Division Benches of this Court holding the

> condition of consultation with the federal body mandatory. One of such judgment is the judgment in the case of "Agricultural Produce Market Committee, Dharni & others Vs. District Deputy Registrar, Co-operative Societies, Amravati, 1986 Mh.L.J. 374". In our opinion, therefore, in order to comply with the mandatory requirement of consultation which is incorporated under sub-section (1) of Section 18 of the Act, it was necessary for the Deputy Registrar not only to take into consideration the opinion expressed by the federation but in order to show that he has complied with the mandatory requirements of consultation and the order that he made should also have shown that he has applied his mind to the opinion expressed by the federation. The requirement of the order made by the authority indicating on the face of it that the authority has applied its mind to the opinion submitted by the federation, will have to read into the provisions in order to make the requirement of consultation effective and meaningful. **In the present case, admittedly, the opinion expressed by the federation has not been considered by the Deputy Registrar while deciding to make the order of bifurcation**. It therefore, suffers from violation of mandatory requirement of consultation with the federal society, and therefore, we have no alternative but to set aside that order. But because the proposal had been submitted as far back as in the year 1979 and the final decision in that regard has not yet been taken, we propose to issue directions to the authority so that a decision can be made by the authority as expeditiously as possible.
>
> *(emphasis and underlining added)*

30) Thus, the Division Bench in ***The Bombay Catholic Co-op. Hsg. Society Ltd*** rejected the contention that it is not necessary for the Registrar to consult Federation after preparation of draft order. The Division Bench held that opinion of the Federal Society must be taken into consideration at both the stages of preparation of draft order as well as at the time of passing of final order.

31) In my view, neither the judgment of the learned Single Judge nor the judgment of the Division Bench in ***The Bombay Catholic Co-op. Hsg. Society Ltd*** provides any assistance for resolution of the dispute at hand. In ***The Bombay Catholic Co-op. Hsg. Society Ltd***, the Federation-Society had initially expressed no objection to the draft scheme, but once again draft order was prepared, the same was also sent to the Federal Society. After the Petitioner-Society resolved against

the proposal for bifurcation and objected before the Deputy Registrar, it simultaneously approached the Federal Society and this time the Federal Society raised objection to the draft order. The Registrar in that case ignored the said objection of the Federal Society while making final order under Section 18 of the MCS Act. The issue before the learned Single Judge and before the Division Bench was whether the opinion expressed by the Federal Society against the draft order could have been altogether ignored by the Registrar. The issue before the Courts in ***The Bombay Catholic Co-op. Hsg. Society Ltd*** was not really about the stage at which the Federal Society was required to be consulted. Therefore the observation of the Division Bench that "*the Registrar has to take into consideration the opinion expressed by the federal society at both the stages i.e. at the stage of making draft order and at the stage of making the final order*" does not mean that the consultation process must happen twice. The Division Bench has held that whenever the opinion is given, it must be taken into consideration at both the stages of preparation of draft order as well as while passing final order. If the ratio of the judgment of the Division Bench in ***The Bombay Catholic Co-op. Hsg. Society Ltd*** is really to be taken into consideration and attempted to be applied in the facts of the present case, the same would in fact militate against Dr. Chandrachud's submissions. It is Petitioner's case that the consultation with the Federal Society must take place before preparation of draft order and not after the draft order is prepared and Society's objections are invited. The submission in fact means that the opinion of the Federal Society must be considered only for preparation of the draft order and not for making the final order. This contention of Petitioner-Society runs counter to the ratio of Division Bench Judgment in ***The Bombay Catholic Co-op. Hsg. Society Ltd***.

32) In the present case, perusal of the impugned subdivision orders dated 18 September 2023 would indicate that the Deputy Registrar has taken into consideration the opinion expressed by the Federal Society by letter dated 4 September 2023. The said opinion finds mention at serial no.7 of reference of orders dated 18 September 2023. The Deputy Registrar has also taken into consideration opinion of the Federal Society in para-6 under the heading '*Observation and Conclusion'* of his order. The Federal Society has consented to subdivision of the Petitioner-Society. Thus, the mandatory requirement of consultation with the Federal Society under Section 18 of the M.C.S. Act is fully complied with. Mere securing of opinion of Federal Society after preparation of draft order has not caused any prejudice to any of the parties.

33) It must also be observed that the objective behind providing mandatory consultation with the Federal Society is to merely ensure that division of a Co-operative Society does not take place behind the back of the Federal Society. The objective is also to ensure that the Registrar is guided by the opinion of the Federal Society in respect of the subdivision proposal. Therefore, whether the opinion of the Federal Society is secured against a draft scheme or against the draft order does not merely make any difference so long as the Registrar takes into consideration the opinion of the Federal Society while making an order of subdivision under Section 18 of the M.C.S. Act. As observed above, Section 18 is silent about the stage at which consultation with the Federal Society is to be made by the Registrar. No doubt, Rule 17 provides for the exact stage at which such consultation is required to be made and the Rule does seem to prescribe the order in which various steps are to be taken by the Registrar, viz (i) preparation of draft scheme, (ii) consultation with Federal Society, (iii) preparation of draft

order, (iv)service of draft order on concerned Society, (v) passing of final order after taking into consideration suggestions and objections. In the present case, the Registrar proceeded to prepare a composite draft order and scheme. The scheme was appended to the draft order as Annexure-A. The draft scheme contained the manner in which the bifurcation was to be effected and provided for various matters such as management of the subdivided societies, ownership of property, management of common amenities, management of utilities, division of accounts etc. As against the draft scheme, draft order is merely the draft of the final order which is proposed to be passed. The Federal Society has taken into consideration the draft scheme of subdivision of the Petitioner-Society and has expressed its 'No Objection' to the proposed subdivision. Therefore, the process of consultation with the Federal Society on the draft scheme is fully met with. If mere draft order was to be circulated to the Federal Society, *sans* the draft scheme, what Dr. Chandrachud contends could have been correct. However, in the present case, the draft scheme has been circulated to the Federal Society on which its views are obtained. This is exactly what is contemplated by Rule 17. Therefore, merely because the Deputy Registrar erroneously circulated even the draft order to the Federal Society together with the draft scheme, the same would not *ipso-facto* vitiate the order of subdivision of societies.

34) In my view therefore the objective behind Section 18 of the M.C.S. Act and Rule 17 of the M.C.S. Rules of consulting the Federal Society on draft scheme and inviting the suggestions and objections from the Society to the draft order have been complied with. No prejudice is caused to the Petitioner-Society on account of Deputy Registrar circulating draft order to the Federal Society. In my view,

therefore the orders of bifurcation cannot be interfered with on the ground of violation of provisions of Section 18 or Rule 17.

35) Except the points considered above, no other contentions about any practical difficulty in effecting the subdivision are urged before me on behalf of the Petitioner-Society and therefore it is not necessary to consider the submission of Mr. Godbole that subdivision is otherwise easily possible on account of division of the blocks by internal roads.

36) The developments that have taken place during pendency of the proceedings can also not be completely ignored. It appears that at the time of passing of the impugned bifurcation orders dated 18 September 2023, the Petitioner-Society had 96 members divided over 12 blocks. However, it appears that 48 out of the said 96 members of the Petitioner-Society have decided to form two separate societies in respect of Block Nos. 7 to 9 and Block Nos. 10 to 12 and filed necessary applications before the Deputy Registrar for that purpose. This development is important from two angles. Firstly, it completely demolishes Petitioner's claim that Respondent Nos.4 and 5 are representing only handful minority members who are opposing to redevelopment process. Now, majority of the erstwhile members of the Petitioner-Society are not with it and are desirous of forming their own independent Society by carrying out their respective redevelopment process. Out of the 144 tenements spread over 18 blocks, 96 tenements occupiers have decided to form separate Societies, leaving only 48 tenement occupiers as members of the Petitioner-Society. Therefore, it can no longer be contended that handful minority members opposing to the redevelopment process have taken indirect route of scuttling the redevelopment by resorting to bifurcation process. Secondly, the

subsequent development of members of Block Nos.7 to 9 and 10 to 12 expressing desire for formation of separate Societies would virtually demolish most of the objections taken by the Petitioner-Society to the subdivision process.

37) In addition to tenement occupiers of Block Nos.7 to 9 and 10 to 12 expressing desire to further subdivision of Petitioner-Society and formation of their independent Societies, the impugned subdivision orders dated 18 September 2023 are apparently acted upon during passage of more than 15 long months. The developments that have occurred after passing of impugned subdivision orders dated 18 September 2023 are borne out by the Affidavits filed on behalf of Respondent Nos.4 and 5-Society. The developments that have occurred after passing of subdivision orders dated 18 September 2023 are as under :

(i) separate Registration Certificates were issued to Respondent Nos.4 and 5-Societies on 21 September 2023.

(ii) Special General Body meeting of Respondent Nos.4 and 5-Societies were held on 5 October 2023 and their respective Management Committees were elected, which took over charge of affairs of their respective Societies. Thereafter, Share Certificates were issued, bank accounts were opened, PAN and TAN were obtained, utility bills were separated and paid by the respective societies.

(iii) Demarcation of boundaries of the lands in respect of the Block Nos.1 to 3 and 4 to 6 was done by MHADA which also issued 'No Due certificates' after payment of amounts of Rs.34.50 lakhs by Respondent No.4 and Rs.33.45 lakhs by Respondent No.5.

(iv) Respondent Nos.4 and 5-Societies filed applications for securing loans of Rs.30 crores each for self-development.

(v) MHADA conducted consent verification on 31 January 2024 of members of Respondent Nos.4 and 5-Societies.

(vi) MHADA issued offer letters dated 24 September 2024 to both the Societies offering additional built-up areas and FSI .

(vii) separate consent letters dated 18 June 2024 were issued by MHADA for Commencement Certificate for work upto the plinth level.

(viii) In December 2024, Respondent No.5 paid an amount of Rs.8.90 crores to MHADA for purchase of additional FSI .

(ix) Members of Respondent Nos.4 and 5-Societies have apparently vacated the tenements in their possession and the process of demolition has commenced by fencing the buildings with tin sheets.

38) Even though the impugned subdivision orders do not suffer from any infirmity and are fully compliant with the statutory provisions, the subsequent developments narrated above would further make the impugned orders unexceptionable. Considering the above developments, it would be too late in a day to restore membership of the Petitioner-Society in respect of all 18 blocks by setting aside orders of formation and registration of Respondent Nos.4 and 5-Societies by setting back the clock to its original stage. In my view, therefore no interference is warranted in the orders passed by the Revisional Authority, Appellate Authority and the Deputy Registrar.

39) The Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs.

40) With disposal of the main petition, nothing would survive in Interim Application No.16030/2024 and Interim Application (St.) No.36992/2024. As the Intervenors are also heard during the course of hearing of the present petitions, both the Interim Applications are therefore disposed of.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT

Digitally signed by NEETA SHAILESH SAWANT
Date: 2025.01.08 11:50:39 +0530